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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,922	07/14/2003	Athanassios Tzikas	4-22221/A/DIV	7981
324	7590	12/17/2004	EXAMINER	
CIBA SPECIALTY CHEMICALS CORPORATION			POWERS, FIONA	
PATENT DEPARTMENT			ART UNIT	
540 WHITE PLAINS RD			PAPER NUMBER	
P O BOX 2005			1626	
TARRYTOWN, NY 10591-9005			DATE MAILED: 12/17/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/618,922

Applicant(s)

TZIKAS ET AL.

Examiner

Fiona T. Powers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-18 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-18, 22 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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Receipt is acknowledged of the amendment filed September 13, 2004 which has been entered in the file.

Claims 15 to 18 and 22 to 26 are objected to because of the following informalities: the proviso excluding two specific dyes that are shown in claim 15 is no longer necessary since claim 15 has been amended such that B is ethylene containing an alkyl branch and B is n-propylene in the two dyes which are excluded. The second dye excluded also has a different group T. The two dyes are not encompassed by claim 15. Appropriate correction is required.

Claims 15 to 18, 22 and 24 to 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reichert et al. (US 5989297), of record.

Determination of the scope and content of the prior art (MPEP §2141.01)

The reference discloses a dye of similar to that of instant formula (1) which is used in a dye mixture. The dye is of the formula (1) wherein A is a monoazo radical of the formula (7d), B is  $-\text{CH}_2\text{CH}(\text{R}_7)-$  or  $-(\text{R}_7)\text{CHCH}_2-$  wherein  $\text{R}_7$  is methyl,  $\text{V}_1$  and  $\text{V}_2$  are N,  $\text{X}_1$  and  $\text{X}_2$  are chlorine,  $\text{R}_1$  and  $\text{R}_2$  are hydrogen,  $\text{R}_3$  is  $\text{C}_2$ -alkylene that is substituted by hydroxy and T is a radical of the formula (2c) or (2c') wherein arylene is phenylene and Y is  $-\text{CH}_2\text{CH}_2\text{OSO}_3\text{H}$ . Note Examples 25 in columns 43/44.

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Ascertainment of the difference between the prior art and the claims (MPEP §2141.02)

The difference between the prior art and the claimed invention is that the prior art dyestuff is used in a dye mixture and the claims are to the individual dye and in the dye of the reference B is n-propylene instead of isopropylene.

Finding of prima facie obviousness---rational and motivation (MPEP §2142-2413)

It has been held that it is obvious to use separately that which is used in a mixture for the same purpose. See In re Kerkhoven, 205 USPQ 1069. In addition, the reference teaches that the group represented by B can be a straight or branched alkylene chain. Note the definition of B in column 3, lines 1 to 7. Also note that the reference on lines 5 to 6 of column 3 specifically mentions 1-methyl-1,2-ethylene for the group which corresponds to B which is the claimed group B where R<sub>7</sub> is methyl. One of ordinary skill in the art would have been motivated to make the claimed dye with the expectation that it would be useful for dyeing cellulosic fiber material.

Applicant's arguments filed September 13, 2004 have been fully considered but they are not persuasive. Applicant states that the instantly claimed dyes are distinguished from those of

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Reichert by the bridging member B and the reactive radical T. However, applicant has not amended the definition of T. T is the same in Reichert as in the instant claims (radical (2c) or (2c')). The bridging group B has been changed to an ethylene group containing an alkyl branch. However, this change would be obvious for the reasons given supra.

The rejections over Phillips et al. have been withdrawn since the claims no longer include A as the radical of a formazan chromophore.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fiona T. Powers whose telephone number is (571)272-0702. The examiner can normally be reached on Monday - Friday 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571)272-0699. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Fiona T. Powers*  
Fiona T. Powers  
Primary Examiner  
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December 14, 2004